IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16339 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?- **No.**

2 To be referred to the Reporter or not ? - **No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? - **No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? - **No.**

5 Whether it is to be circulated to the civil judge ? - **No.**

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LATE SONABEN VELJIBHAI CHAUDHARI - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR SP MAJMUDAR for Petitioner No(s).: 1.

MS.FALGUNI PATEL AGP for Respondent No(s).: 1.
NOTICE NOT RECD BACK for Respondent No(s).: 1.
DS AFF.NOT FILED (N) for Respondent No(s).: 2.
NOTICE SERVED BY DS for Respondent No(s).: 3.

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 18/08/2005

ORAL JUDGMENT

Rule. Ms.Falguni Patel, learned AGP waives service of Rule. Mr.P.K.Jani, learned advocate waives service of

rule on behalf of NCTE.

1. Late Sonaben Veljibhai Chaudhari, petitioner has filed this petition under Article 226 and 227 of the Constitution of India for a writ of mandamus or any other appropriate writ or order for directing respondent no.1, State Government, respondent no.2, National Council for Teachers Education and respondent no.3, Hemchandracharya North Gujarat University, Patan to grant No Objection Certificate (NOC) to the petitioner trust for the purpose of opening B.Ed. College at village Pamol, Taluka Vijapur, District:Mehsana. Originally petition was filed on 8/8/2005. This court has passed orders on 9/8/2005 and 16/8/2005. I have heard Mr.S.P.Majmudar, learned advocate on behalf of the petitioner and Ms.Falguni Patel, learned AGP on behalf of respondents.

2. The facts giving rise to this petition are as under:

2.1 The petitioner is a charitable trust registered under the Bombay Public Trusts Act and is represented through its President.

2.2Petitioner in this case prays for appropriate writ upon the respondents authorities to issue No Objection Certificate (NOC) to the petitioner for opening its new B.Ed. College for the academic year 2005-2006.

2.3It is the case of the petitioner that petitioner trust has completed all the formalities and necessary inspection has also been carried out by the National Council for Teachers Education (NCTE) for opening of B.Ed. College in village Pamol, Ta.:Vijapur, District:Mehsana.

2.4It is the case of the petitioner that permission was rejected by the State Government vide letter dated 16/1/2004. However, recently NCTE has granted its approval vide its communication dated 27/6/2005 for recognition of Secondary Level Teachers Training Institute for petitioner for 100 seats. Said letter of the NCTE has been produced by the petitioner and the same is taken on record.

2.5It is the case of the petitioner that all the formalities are completed. It is also the case of the petitioner that petitioner has paid affiliation fees of Rs.60,000/- and process fees of Rs.100/- to the North

Gujarat University and for that petitioner has addressed a letter dated 4/7/2005 to the North Gujarat University and also filed necessary form in this behalf. The petitioner trust has also passed resolution to start new B.Ed. College subject to NOC of the Government.

2.6It is the case of the petitioner that even the University has also given certificate, that if the petitioner is approved by the NCTE, it can start the college in this behalf.

3.The petitioner has applied on 30/6/2005. Petitioner addressed a letter dated 30/6/2005 and informed that he has applied for NOC on 26/12/2003 for which Government has rejected the said on 16/1/2004. However, petitioner received approval of NCTE on 16/4/2005 and now the State Government is requested to issue NOC, though it was instructed by this Court, still government has not replied. Even the learned AGP has stated that she has not received any instruction in this behalf.

4.Petitioner has relied upon the judgment of the Hon'ble Apex Court, in the case of St.John Teachers Training

Institute vs. Regional Director, NCTE and another, reported in 2003 (3) SCC 321, particularly para 17, 18 and 19 (page 335 and 336) of the said judgment.

5. It is the case of the petitioner that in view of the judgment of the Hon'ble Apex Court, particularly para 16, where NCTE has issued guidelines to the State Government, there is no need to obtain NOC from the Government in this behalf.

6. Petitioner has also relied upon the communication from the University dated 27/7/2005 that if the petitioner has received NOC, then they will able to give recognition. Petitioner has also relied upon earlier order of this Hon'ble Court dated 24/8/2004 in Misc. Civil Application No.1269 of 2004 in Special Civil Application No.2252 of 2004, in the case of Anand Niketan Education Trust vs. State of Gujarat and also relied upon another order decided on 24/9/2004 in Misc. Civil Application No.1543 of 2004 in Special Civil Application No.802 of 2004, in the case of Anand Niketan Education Trust vs. State of Gujarat. In both the cases, this Court (Coram:K.M.Mehta, J.) has considered similar question and held that authority has not considered any material on record and authority has

not taken into consideration and did not even communicate the reasons to the Government either to accept or to reject the application of NOC.

7. In view of the aforesaid facts and circumstances of the case, when earlier petitioner applied for NOC, the same was rejected in January, 2004. However, subsequently, NCTE has granted approval vide his communication dated 27/6/2005. Thereafter again the petitioner has applied for NOC on 30/6/2005. However, the Government neither replied nor considered the request of the petitioner. I have considered the judgment of the Apex Court in the case of St.John Teachers Training Institute vs. Regional Director, NCTE and another and in view of the said judgment, the role of NCTE is in primary nature and the role of the State Government giving NOC become very subsidiary. Once NCTE granted approval, the State Government ought to consider this and decide the application in this behalf, as the academic year 2005-2006 already started. This petition was filed on 8/8/2005 and this Court has passed orders on 9/8/2005 and 16/8/2005. Inspite of these orders, unfortunately the State Government has still not replied regarding NOC in this behalf. In view of this facts and circumstances of the case, I issue a writ of mandamus

directing the respondent, State Authority to grant NOC to the petitioner forthwith as the petitioner obtained NCTE permission for the year 2005-2006.

8.This petition is allowed. Rule is made absolute with no order as to costs. Direct service permitted.

(K.M.MEHTA, J.)

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